

### **Remarks**

Claims 21 – 51 remain in the application. Applicant includes herewith a terminal disclaimer and a completed credit card payment form PTO-2038 for 65 dollars to cover the 65 dollar cost of the terminal disclaimer. This transmittal is presented in response to the fourth office action and is believed to completely resolve each issue as raised by the examiner. Applicant believes the claims as amended to be non-obvious and patentably distinct from all prior art.

#### **OA Item #1: Rejection of claims 47-48 under 35 USC § 112 first paragraph – Written description:**

The examiner contends that applicant's specification as originally filed failed to teach "a container having a non-annular funnel connected to an opening in a wall of the container wherein the funnel axis is defined as running substantially from the center of the opening in the wall to substantially the center of an opening in the funnel located within the container, and wherein a cross-sectional shape of the funnel in a position substantially normal to the funnel axis defines a cross-sectional shape having a first breadth dimension and a second breadth dimension and wherein the first breadth dimension is greater than the second breadth dimension". Applicant respectfully traverses the examiner's rejection of claims 47-48 under 35 USC § 112 first paragraph written description requirement.

With respect to the non-annular cross-section shape, applicant points out that in order to maximize the spill resistivity of applicant's container, that the anticipated potential gap between the intended work piece and sidewalls of applicant's funnel were minimized. In other words, applicant's funnel was sized and shaped for an egg (i.e. the intended work piece which has a generally elliptical shaped cross-section) to pass through applicant's funnel without excessive gaps or openings through which jostled or splashed liquid could spill. Accordingly, applicant's funnel forms the shape of an "extruded ellipse". Applicant notes that an ellipse, by definition, includes a first breadth dimension that is greater than a second breadth dimension. Furthermore, the well of applicant's container, forms a well having a corresponding generally elliptical cross-sectional shape. This fact is rendered clear by reference for instance to drawing figure 2. In figure 2, an exploded isometric view of applicant's

container, the container is shown as having a generally conical shape. Accordingly and in particular, the upper edge of lid 30 is shown as a circle (refer to the upper edge of lid 30 nearest the arrowhead of feature callout 30). Note that this circular edge is in distinct contrast to the elliptical upper edge of funnel opening 36. Were it not so and funnel 34 were circular in cross-sectional shape rather than elliptical in cross-sectional shape, then the distance between upper opening edge 36 and the upper outer corner of lid 30 would need to be constant regardless of the clocking or angular orientation of where a measurement is taken. But inasmuch as funnel 34 is elliptical in cross-sectional shape, the distance between funnel upper opening 36 and the upper outer edge of lid 30 is the least when measured at an angular orientation in line with tab 31 (because the major diameter of funnel 34 cross-section is in line with tab 31), and the distance between funnel upper opening 36 and the upper outer edge of lid 30 is the greatest when measured at an angular orientation 90 degrees from tab 31 (because the minor diameter of funnel 34 cross-section is 90 degrees from tab 31). It can also bee seen in figure 2 (and figure 1) and confirmed in figures 3, 4, and 5, that the edge of funnel lower opening 38 defines an ellipse that is angularly in line with the elliptical edge of funnel upper opening 36, but is of smaller and offset major and minor diameters. Having thus pointed out that the funnel of applicant's container is elliptical in cross-sectional shape, applicant respectfully points out that "elliptical" satisfies the definition of "non-annular".

With respect to the axis of applicant's funnel, the axis is merely a theoretical line that passes through the center of elliptical opening 36 and elliptical opening 38. Thus while the axis exists, it is not shown in the drawing figures. The purpose of including the definition of the axis was to define the orientation of a cross-sectional cut of funnel 34 so as to ensure that the resultant cross-sectional cut was elliptical. For instance, if funnel 34 were to have a cross-sectional cut taken vertically, then the resultant cross-section would not result in an ellipse, but rather it would result in the straight lines shown nearest the arrowhead of feature callout 34 in figures 3, 4, and 5. Having thus established support for the non-annular cross-section, applicant respectfully requests that the examiner's rejection of claims 47-48 be withdrawn.

**OA Item #2: Rejection of claims 50-51 under 35 USC § 112 first paragraph – Written description:**

The examiner points out that applicant's originally filed specification teaches that, "the article or work piece in the kit are chosen from the group consisting of a colorable work piece, a substantially egg shaped work piece, an edible work piece, a substantially egg shaped edible work piece, and an egg". The examiner then contends that, "the term "edible matter" reads on liquids which are not disclosed by the originally filed specification". Applicant respectfully traverses the examiner's rejection of claims 50-51 under 35 USC § 112 first paragraph written description requirement based on the following two reasons.

1) Inappropriate test: Applicant respectfully suggests that the examiner has used the wrong test to assess compliance with the 35 USC § 122 written description requirement. The appropriate test is not to determine if there may be subject matter than is not disclosed in the specification that claim terminology may read on, but rather that all claim terminology finds support in the specification. Thus with respect to the written description requirement, that the term "edible matter" reads on liquids is of no concern, so long as the term "edible matter" finds support in the specification. Clearly, "edible matter" does find support in the specification by virtue of "an edible work piece, a substantially egg shaped edible work piece, and an egg" as quoted by the examiner. Thus the written description requirement is satisfied.

2) Liquids disclosed in specification. Applicant respectfully points out that contrary to the examiner's contention, liquid, and more specifically edible liquid (which the examiner states that "edible matter" reads on), finds support in applicants originally filed specification. See for instance "SUMMARY OF THE INVENTION", third sentence, which reads, "In practice, the user places liquid dye or a coloring concentrate and **water** and a colorable object such as an egg within the container". Applicant has taught that water, an edible liquid, is placed in the container. Thus again, the written description requirement is satisfied.

**OA Item #3: Provisional double patent rejection of claims 28-29, 31, 33, 49:**

In response to the examiners provisional double patenting rejection, applicant files herewith a terminal disclaimer. Accordingly, applicant respectfully requests that the double patenting rejection be withdrawn.

**OA Item #4: Rejection of claims 50-51 under 35 USC § 103(a) – Obviousness:**

The examiner has rejected claims 50-51 under 35 USC § 103(a) as being unpatentable over Schramm '046 in view of Broshi et al '172. In response, applicant has re-claimed the benefit of earlier filed applications, thus re-establishing Schramm '046 as non-prior art. Inasmuch as Schramm '046 and Broshi '172 are not prior art, applicant respectfully requests that the rejection be withdrawn.

**OA Item #5: Rejection of claims 40, 43, and 45 under 35 USC § 102(e) – Anticipation:**

The examiner has rejected claims 40, 43, and 45 under 35 USC § 102(e) as being anticipated by Martindale '797. Applicant has re-claimed the benefit of earlier filed applications, thus re-establishing Martindale '797 as non-prior art. Inasmuch as Martindale '797 is not prior art, applicant respectfully requests that the rejection be withdrawn.

**OA Item #6: Rejection of claim 42 under 35 USC § 103(a) – Obviousness:**

The examiner has rejected claim 42 under 35 USC § 103(a) as being unpatentable over Martindale '797. Applicant has re-claimed the benefit of earlier filed applications, thus re-establishing Martindale '797 as non-prior art. Inasmuch as Martindale '797 is not prior art, and inasmuch as claim 42 is dependant upon and inherently includes all of the limitations of allowable claim 40, applicant respectfully requests that the rejection be withdrawn.

**OA Item #7: Rejection of claim 41 under 35 USC § 103(a) – Obviousness:**

The examiner has rejected claim 42 under 35 USC § 103(a) as being unpatentable over Martindale '797 in view of Lintvedt '294. Applicant has re-claimed the benefit of earlier filed applications, thus re-establishing Martindale '797 as non-prior art. Inasmuch as Martindale '797 is not

prior art, and inasmuch as claim 41 is dependant upon and inherently includes all of the limitations of allowable claim 40, applicant respectfully requests that the rejection be withdrawn.

**OA Item #8: Rejection of claims 21-22, 24-28, 30-34, 36-40, 42-45, and 47-51 under 35 USC § 103(a) – Obviousness:**

The examiner has rejected claims 21-22, 24-28, 30-34, 36-40, 42-45, and 47-51 under 35 USC § 103(a) as being unpatentable over the combination of Law '239 in view Schramm '046, Hunter (GB) 1,428,356, Martindale '797, and Japan 11-227388. Applicant has re-claimed the benefit of earlier filed applications, thus re-establishing Schramm '046 and Martindale '797 as non-prior art. Inasmuch as Schramm '046 and Martindale '797 are not prior art, applicant respectfully requests that the rejection be withdrawn.

**OA Item #9: Rejection of claims 23, 29, 35, and 41 under 35 USC § 103(a) – Obviousness:**

The examiner has rejected claims 23, 29, 35, and 41 under 35 USC § 103(a) as being unpatentable over the combination of Law '239 in view Schramm '046, Hunter (GB) 1,428,356, Martindale '797, and Japan 11-227388 in further view of Lintvedt '294. Applicant has re-claimed the benefit of earlier filed applications, thus re-establishing Schramm '046 and Martindale '797 as non-prior art. Inasmuch as Schramm '046 and Martindale '797 are not prior art, and inasmuch as claims 23, 29, 35, and 41 are dependant upon and inherently includes all of the limitations of allowable claims 21, 28, 34, and 40 respectively, applicant respectfully requests that the rejection be withdrawn.

**Conclusion:**

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming Applicant's invention.

Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the amendments and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the Examiner has any questions or comments which may be resolved over the telephone, she is requested to call Michael R. Schramm at 801-625-9268 (wk) or at 435-734-2599 (hm).

DATE: September 19, 2005

Respectfully submitted,

  
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Michael R. Schramm